

APPEAL NOS. 021352 AND 021353
FILED JULY 10, 2002

These appeals arise pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on March 21, 2002, with the record closing on April 24, 2002. The hearing officer resolved the disputed issues in (docket 1) by determining that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the correct date of injury is _____; that the claimant did not timely report the claimed injury to her employer pursuant to Section 409.001; that no good cause exists under the 1989 Act for the claimant's failure to timely notify her employer of the occurrence of a work-related injury; and that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001. The hearing officer resolved the disputed issues in (docket 2) by determining that the claimant did not sustain a compensable repetitive trauma injury on _____, and therefore did not have disability. The claimant has challenged these determinations on sufficiency of the evidence grounds, asserting that the hearing officer failed to "liberally construe the facts in favor of the employee" and that "the hearing officer apparently did not like the Claimant." The carrier filed a response, urging the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that while working as a legal secretary at a law firm in the fall of 1999, the floor of the building where she worked was renovated and that her exposure to fiberglass, construction dust, and other unknown substances caused her to have sinusitis, chest congestion, and earaches and that these conditions eventually led to her being diagnosed with cognitive disorder. She stated that she, and other employees, repeatedly advised Ms. C, in the employer's human resources office, of this injury. The claimant also testified that on _____, she injured her low back lifting bankers boxes of files and that sometime in the preceding May she injured her right wrist from such heavy lifting.

The claimant had the burden to prove that she sustained the claimed injuries and that she had the claimed disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. That holds true as well for the issues of timely notice and the claimant's burden to prove her date of injury. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not

binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer states in his discussion of the evidence that, having listened to and observed the claimant at the hearing, he found her testimony neither credible nor persuasive. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decisions and orders of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge